



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2021-0307; FRL-8894-01-R3]

Air Plan Approval; Pennsylvania; Allegheny County Area Fine Particulate Matter Clean Data Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Allegheny County, Pennsylvania nonattainment area has clean data for the 2012 annual fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS). This proposed clean data determination (CDD) under EPA's Clean Data Policy is based upon quality-assured, quality-controlled, and certified ambient air quality monitoring data showing that the area has attained the 2012 PM_{2.5} NAAQS based on 2018-2020 data available in EPA's Air Quality System (AQS) database. Based on the proposed clean data determination, EPA is also proposing to determine that the requirements for Pennsylvania to make submissions to meet certain Clean Air Act (CAA or the Act) requirements related to attainment of the NAAQS for this area are not applicable for as long as the area continues to attain the 2012 annual PM_{2.5} NAAQS. This action is being taken under the CAA.

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2021-0307 at <https://www.regulations.gov>, or via email to gordon.mike@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit

electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **For Further Information Contact** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2176. Mr. Rehn can also be reached via electronic mail at rehn.brian@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever “we”, “us” or “our” are used, it is intended to refer to the EPA.

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I. Background

On December 14, 2012, EPA promulgated a revised primary annual PM_{2.5} NAAQS to provide increased protection of public health from fine particle pollution (2012 PM_{2.5} NAAQS).¹

¹ 78 FR 3086, January 15, 2013.

In that action, EPA strengthened the primary annual PM_{2.5} standard, lowering the level from 15.0 micrograms per cubic meter (µg/m³) to 12.0 µg/m³, and retained the 24-hour PM_{2.5} NAAQS at a level of 35 µg/m³. The 2012 annual PM_{2.5} NAAQS is attained when the 3-year average of the annual arithmetic means does not exceed 12.0 µg/m³.² Effective April 15, 2015, EPA established air quality designations, as required by section 107(d)(1) of the CAA, for the 2012 annual PM_{2.5} NAAQS.³ In that action, EPA designated the Allegheny County Area in Pennsylvania as Moderate nonattainment for the 2012 annual PM_{2.5} NAAQS.

On August 24, 2016, EPA issued the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (PM_{2.5} SIP Requirements Rule).⁴ The PM_{2.5} SIP Requirements Rule is codified at 40 CFR part 51, subpart Z and provides rules for the implementation of current and future PM_{2.5} NAAQS.

On April 6, 2018, EPA issued a finding of failure to submit under section 110(k) of the CAA finding that several states, including Pennsylvania, failed to submit specific moderate area SIP elements for the 2012 annual PM_{2.5} NAAQS required under subpart 4 of part D of Title I of the CAA.⁵ In particular, Pennsylvania was late in submitting the following specific moderate area SIP elements for the Allegheny County Area: an attainment demonstration; control strategies, including reasonably available control measures (RACM) and reasonably available control technologies (RACT); a reasonable further progress (RFP) plan; quantitative milestones; and contingency measures. That finding triggered the sanctions clock under section 179 of the CAA, as well as an obligation under section 110(c) of the CAA for EPA to promulgate a Federal Implementation Plan (FIP) no later than two years from the effective date of the finding, if Pennsylvania did not submit, and EPA had not approved, the required SIP element submission(s). Pennsylvania submitted the required Allegheny County Area PM_{2.5} Plan on

² See 40 CFR 50.18 and 40 CFR part 50, appendix N.

³ 80 FR 2206 (January 15, 2015).

⁴ 81 FR 58010, effective October 24, 2016.

⁵ 83 FR 14759 (April 6, 2018).

September 30, 2019. On November 1, 2019, EPA determined the submitted PM_{2.5} Plan for the Allegheny County Area to be technically and administratively complete, per the requirements in accordance with CAA section 110(k) and 40 CFR part 51, appendix V. This completeness determination corrected the deficiency identified in EPA's April 6, 2018 (83 FR 14759) document finding that Pennsylvania failed to submit certain nonattainment area planning requirements for the Allegheny County Area for the 2012 PM_{2.5} NAAQS, turning off the sanctions clock (but not the FIP clock) triggered by the April 6, 2018 finding. On May 14, 2021 (86 FR 26388), EPA approved most required elements of the Allegheny County Area PM_{2.5} Plan, except for the contingency measures element of the plan, which EPA conditionally approved. That action terminated EPA's FIP obligation for all CAA required nonattainment plan elements except for the contingency measures element. As to the contingency measures element of the Allegheny County Area PM_{2.5} Plan, EPA's May 14, 2021 conditional approval action suspended EPA's FIP obligation for the duration of the conditional approval. Upon EPA's approval of a SIP submission fulfilling the State commitment that had provided the basis for the conditional approval, EPA's FIP obligation with respect to the contingency measures element of the Allegheny County Area Plan will be terminated.

In accordance with the requirements of 40 CFR 51.1015, EPA may issue a clean data determination for a specific area if we determine the area has attained the relevant NAAQS based on three years of quality-assured, certified air quality monitoring data.⁶ Over the past two decades, EPA has consistently applied its Clean Data Policy interpretation to attainment related provisions of subparts 1, 2, and 4 of the CAA. EPA codified portions of the longstanding Clean Data Policy approach in the PM_{2.5} SIP Requirements Rule (40 CFR 51.1015(a)) for the implementation of current and future PM_{2.5} NAAQS.⁷ For a complete discussion of the history of EPA's Clean Data Policy and our longstanding interpretation of that policy under the CAA,

⁶ Per the requirements for determining whether an area has attained the annual PM_{2.5} NAAQS at 40 CFR 50.18(c) and 40 CFR Appendix N to part 50.

⁷ See 81 FR 58010, 58161 (August 24, 2016).

please refer to the August 24, 2016 PM_{2.5} SIP Requirements Rule (81 FR 58010).

As provided in 40 CFR 51.1015, so long as an area continues to meet the NAAQS, finalization of a CDD suspends the requirements for a nonattainment area to submit an attainment demonstration, associated RACM and RACT, an RFP plan, quantitative milestones, contingency measures, and any other SIP planning requirements related to the attainment of the 2012 annual PM_{2.5} NAAQS. The requirement to submit a projected attainment inventory as part of an attainment demonstration or RFP plan is also suspended by this determination. As discussed in the 2016 PM_{2.5} SIP Requirements Rule, the nonattainment base year emissions inventory required by section 172(c)(3) of the CAA is not suspended by this determination because the base inventory is a requirement independent of planning for an area's attainment.⁸ Additionally, as discussed in the PM_{2.5} SIP Requirements Rule (and required by sections 110(a)(2)(C); 172(c)(5); 173; 189(a), and 189(e) of the CAA), nonattainment New Source Review (NNSR) requirements are not suspended by a CDD because this requirement is independent of the area's attainment planning.⁹

By extension, the requirement to submit a motor vehicle emissions budget (MVEB) for the attainment year for the purposes of transportation conformity is also suspended. A MVEB is that portion of the total criteria pollutant emissions associated with allowable highway and transit vehicle use, as defined in the submitted or approved control strategy implementation plan revision or maintenance plan, for a certain date. The MVEB serves as a cap on highway mobile source section emissions for the purpose of meeting RFP milestones or demonstrating attainment or maintenance of the NAAQS. For purposes of the transportation conformity regulations, the control strategy implementation plan revision is the implementation plan which contains specific strategies for controlling the emissions of, and reducing ambient levels of, pollutants in order to satisfy CAA requirements for demonstrations of RFP and attainment. Given that MVEBs are

⁸ See 81 FR 58009 at 58028 and 58127–8 (August 24, 2016) and 80 FR 15340 at 15441–2 (March 23, 2015).

⁹ See 81 FR 58010 at 58107 and 58127 (August 24, 2016).

required to support RFP and attainment demonstration requirements in the attainment plan, suspension of the RFP and attainment demonstration requirements through a CDD also suspends the requirement to submit MVEBs for attainment and RFP milestone years. Suspension of planning requirements under the clean data policy (pursuant to 40 CFR 51.1015) does not preclude the state from submitting suspended elements of its moderate area attainment plan for EPA approval for the purposes of strengthening the state's SIP, nor does issuance of a CDD compel the state to withdraw previously submitted or SIP-approved elements of its moderate area attainment plan.

A CDD is not equivalent to a redesignation under CAA section 107(d)(3), and the state must still meet the statutory requirements for redesignation in order to be redesignated to attainment. In accordance with 40 CFR 51.1015(a)(1) and (2), a CDD suspends the aforementioned SIP obligations until the area is redesignated to attainment (after which time such requirements are permanently discharged); or until EPA determines that the area has re-violated the PM_{2.5} NAAQS. In the event the area re-violates the NAAQS, the state shall once again be required to submit all required attainment plan elements for the Moderate nonattainment area, by a deadline established by EPA through publication in the **Federal Register** of the determination that the area is once again violating the 2012 annual PM_{2.5} NAAQS.

II. Clean Data Determination for the Allegheny County, Pennsylvania 2012 PM_{2.5} NAAQS Nonattainment Area

Under EPA regulations at 40 CFR 50.18 and part 50, appendix N, the 2012 annual PM_{2.5} NAAQS is met when the 3-year average of PM_{2.5} annual mean mass concentrations for each eligible monitoring site is less than or equal to 12.0 µg/m³. Three years of valid, annual means are required to produce a valid annual PM_{2.5} NAAQS design value. A year of data meets data completeness requirements when quarterly data capture rates for all four quarters are at least 75 percent from eligible monitoring sites.¹⁰ By a letter to EPA dated March 08, 2021, Allegheny

¹⁰ See 40 CFR part 50, appendix N.

County Health Department (ACHD) certified its 2020 ambient air quality monitoring data. EPA issued final 2018-2020 design values on May 24, 2021.¹¹ There are nine PM_{2.5} eligible Federal Reference Method (FRM) or Federal Equivalent Method (FEM) monitoring sites in the Allegheny County nonattainment area. Table 1 in this document shows the Allegheny County Area design values for the 2012 annual PM_{2.5} NAAQS for the years 2018–2020 at all area monitoring sites.

Table 1. 2018-2020 Annual PM_{2.5} Values for the Allegheny County, Pennsylvania Area

Monitor Name	Monitor ID	Weighted mean (µg/m ³)			Complete quarters			Certified annual design value 2018-2020 (µg/m ³)
		2018	2019	2020	2018	2019	2020	
Avalon	420030002	9.61	9.89	8.57	4	4	4	9.4
Lawrenceville	420030008	8.97	8.97	7.66	4	4	4	8.5
South Fayette	420030067	8.12	7.65	6.56	4	4	4	7.4
North Park	420030093	7.2*	6.81	5.74*	3	4	3	6.6*
Harrison	420031008	9.25	8.64	7.32	4	4	4	8.4
North Braddock	420031301	10.17	9.85	9.03	4	4	4	9.7
Clairton	420033007	8.80	7.87	7.34	4	4	4	8.0
Liberty	420030064	11.52	12.16	9.76	4	4	4	11.1
Parkway East	420031376	10.25	10.79	8.97	4	4	4	10.0

*North Park has incomplete data sets for 2018 and 2020.

Table 2. Data Capture Rates (%) and Creditable Samples by Quarter (Q) for the North Park Monitor [420030093]

	2018				2019				2020			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Creditable Samples	15	15	16	5	14	15	15	14	15	14	15	2
Capture Rate	100	100	100	33	93	100	94	93	100	93	94	13

¹¹ See EPA's Air Quality Design Values webpage, at <https://www.epa.gov/air-trends/air-quality-design-values>.

As shown in Table 1 in this document, for monitors in the Allegheny County area, all but the North Park monitoring location have complete 2018-2020 reporting data capture rates of at least 75%. At the North Park monitoring site, the fourth quarter in 2018 and the fourth quarter in 2020 for the North Park monitor [Monitor ID 420030093] had a data capture rate of 33% and 13%, respectively. The North Park monitor data was incomplete in fourth quarter 2018 because of a roof replacement taking place at the monitor location and North Park was approved for shut down in the third quarter of 2020 in ACHD's "Annual Monitoring Plan for Calendar Year 2021."

Consistent with the requirements contained in 40 CFR part 58, EPA has reviewed the PM_{2.5} ambient air quality monitoring data for the monitoring period from 2018 through 2020 for the Allegheny County nonattainment area, as recorded in the AQS database, and has determined the data meet the quality assurance requirements set forth in 40 CFR part 58. In this respect, the data has been deemed usable by EPA for regulatory compliance purposes. As shown in Table 1 in this document, each quarter from 2018 through 2020 is complete, with all four quarters reporting data capture rates of at least 75 percent (with the exception of the North Park monitor, as noted above). The highest certified annual design value for 2018–2020 is 11.1 µg/m³, with all nine ambient monitors below the 2012 annual PM_{2.5} NAAQS of 12.0 µg/m³. Therefore, the Allegheny County nonattainment area has attained the 2012 annual PM_{2.5} NAAQS in accordance with the requirements in 40 CFR 50.18 and appendix N.

III. Proposed Action

Pursuant to the PM_{2.5} Clean Data Policy codified at 40 CFR 51.1015, EPA proposes to determine that based on three years of certified, valid monitoring data between 2018 and 2020, the Allegheny County nonattainment area has attained the 2012 annual PM_{2.5} NAAQS. Pursuant to 40 CFR 51.1015(a), and based upon our proposed clean data determination that the Allegheny County Area has attained the NAAQS, EPA proposes to determine that the CAA requirements to submit attainment-related SIP revisions arising from classification of the Area as Moderate nonattainment under subpart 4 of part D, of title I of the Act for the 2012 annual PM_{2.5} NAAQS

are not applicable for so long as the area continues to attain the 2012 annual PM_{2.5} NAAQS. In particular, if EPA finalizes this determination, it will suspend the requirements for the area to submit an attainment demonstration, RACM and RACT, RFP plan, quantitative milestones, contingency measures, and any other SIP requirements related to the attainment of the 2012 annual PM_{2.5} NAAQS, so long as the area continues to meet the NAAQS, until the area is redesignated to attainment. If this proposed CDD action is finalized, the FIP clock triggered by the EPA's April 6, 2018 finding of failure to submit will be suspended for these plan elements for as long as the CDD remains in effect.¹²

EPA's May 14, 2021 conditional approval of the contingency measures element of the Allegheny County Area PM_{2.5} Plan suspended EPA's FIP obligation with respect to this element of the plan for the duration of the conditional approval. If EPA approves a SIP submission fulfilling the State commitment that had provided the basis for the conditional approval, the FIP obligation triggered by EPA's April 6, 2018 finding of failure to submit will be terminated. Alternatively, if the State fails to fulfill its commitment and EPA converts the conditional approval to a disapproval, the conditional approval would no longer provide a basis for suspending EPA's FIP obligation, because the State would have failed to correct the deficiency identified in EPA's April 6, 2018 finding of failure to submit.¹³ If, however, EPA finalizes our proposed CDD for the area, the CDD would provide an independent basis for continued suspension of the FIP obligation, for so long as the area continues to attain the 2012 PM_{2.5} NAAQS. If the area then violates the NAAQS and EPA rescinds the CDD, the CDD would also no longer provide a basis for suspending EPA's FIP obligation, and EPA would have an immediate obligation to promulgate a FIP addressing the contingency measure requirement for the 2012 PM_{2.5} NAAQS in the Allegheny County area.

¹² See 83 FR 14759.

¹³ 83 FR 14759 (April 6, 2018) (noting that "EPA is obligated to promulgate a federal implementation plan (FIP) to address any outstanding SIP requirements, if a state does not submit, and EPA does not approve, a state's submission within 24 months of the effective date of these findings").

This proposed clean data determination does not constitute a redesignation to attainment of the NAAQS. The Allegheny County Area will remain designated nonattainment for the 2012 annual PM_{2.5} NAAQS until such time that EPA determines the Allegheny County nonattainment area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan, pursuant to CAA sections 107 and 175A. EPA is soliciting public comments on this proposed action, which we will consider prior to taking final action.

IV. Statutory and Executive Order Reviews

This rulemaking action makes a clean data determination for attainment of the 2012 PM_{2.5} NAAQS based on air quality and does not impose additional requirements. For that reason, this clean data determination:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed clean data determination for the Allegheny County Area for the 2012 annual PM_{2.5} NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, and Reporting and recordkeeping requirements.

Dated: August 26, 2021

Diana Esher,
Acting Regional Administrator,
Region III.